

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

DECISION AND ORDER
07-CV-818S

ONE 2004 LAND ROVER RANGE ROVER,
VIN: SALME11464A175730 seized from
Douglas Turnage,

Defendant,

SANFER SPORTS CARS, INC.,

Claimant.

1. On December 10, 2007, Plaintiff filed a Verified Complaint for Forfeiture against the Defendant property. (Docket No. 1.) On January 23, 2008, Claimant filed a Verified Claim. (Docket No. 8.) Thereafter, this Court referred this matter to the Honorable Leslie G. Foschio, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1) for all pretrial matters and to hear and report on dispositive motions. (Docket No. 19.)

2. On March 14, 2008, Plaintiff filed a Motion to Strike the Claimant's Claim and Answer and for Entry of an Order of Default Judgment of Forfeiture. After full briefing, Judge Foschio issued a Report and Recommendation on March 5, 2009, recommending that Plaintiff's motion be granted and that a judgment of forfeiture be entered against the Defendant property. (Docket No. 36.) Claimant filed Objections to Judge Foschio's Report and Recommendation on March 30, 2009. (Docket No. 40.)

3. Having thoroughly reviewed Judge Foschio's Report and Recommendation and Claimant's objections thereto, this Court concurs with Judge Foschio's determination that Claimant, as a general unsecured creditor, lacks an ownership interest in the Defendant property sufficient to confer proper standing. See 18 U.S.C. § 983(d)(6)(B)(I) (excluding from the definition of owner "a person with only a general unsecured interest in, or claim against, the property or estate of another"); United States v. Cambio Exacto, S.A., 166 F.3d 522, 526 (2d Cir. 1999) ("In order to contest a governmental forfeiture action, claimants must have both standing under the statute or statutes governing their claims and standing under Article III of the Constitution as required for any action brought in federal court."). Subject matter jurisdiction over Claimant's claim is therefore lacking and the claim must be stricken.

IT HEREBY IS ORDERED, that this Court accepts Judge Foschio's Report and Recommendation (Docket No. 36) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Plaintiff's Motion to Strike Claimant's Claim (Docket No. 20) is GRANTED.

FURTHER, that the Clerk of the Court is directed to Strike Claimant's Claim (Docket No. 8) and Answer (Docket No. 13) from the docket.

FURTHER, that Claimant's Objections to the Report and Recommendation (Docket No. 40) are DENIED.

FURTHER, that this Court will enter a judgment of forfeiture against the Defendant property by separate Order.

SO ORDERED.

Dated: March 31, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge